

**REMARKS**

**Drawings:**

Applicant thanks the Examiner for indicating that the drawings filed on January 23, 2003 have been accepted.

**Claim Rejections:**

Claims 1-28 are all of the claims pending in the present application and currently all of the claims stand rejected.

***35 U.S.C. § 102(e) Rejection - Claims 1-5, 7-16 and 18-28:***

Claims 1-5, 7-16 and 18-28 remain rejected under 35 U.S.C. § 102(e) as being anticipated by the previously applied Hardwick reference. In view of the following comments, Applicant respectfully disagrees.

First, Applicant notes that the claims of the present application are clearly drawn to a "fiber optic ribbon" and the disclosure within Hardwick is a complete fiber optic cable. Applicant does note that the reference to a "fiber optic ribbon" in the claims occurs in the preamble. However, Applicant notes that the Examiner's application of the cable in Hardwick is not appropriate.

Applicant notes that under current US patent law "[n]o litmus test can be given with respect to when the introductory words of a claim, the preamble, constitute a statement of purpose for a device or are, in themselves, additional structural limitations of a claim ... The effect preamble language should be given can be resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim." Corning Glass Works v. Sumitomo Electric U.S.A. Inc., 9 USPQ2d

1962, 1966 (CA FC 1989). The Court in Corning determined that the term "an optical waveguide" in the preamble does not merely state a purpose or intended use for the claimed structure, rather, those words do give "life and meaning" and provide further positive limitations to the invention claimed. Id. at 1966. this is similar to the language used in the present invention, a "fiber optic ribbon."

Further, the Court in Kropa v. Robie, 88 USPQ 478 (CCPA 1951), stated that the meaning of the preamble may be a vital term of a [claim] and must be taken from the application in which the [claims] originated. Id., at 481 (CCPA 1951). In addition, in *ex parte* cases where the preamble of the claim or count is expressly or by necessary implication given the effect of a limitation, the introductory phrase is deemed essential to point out the invention defined by the claim or count and the preamble is considered necessary to give life, meaning, and vitality to the claims or counts. Id. Specifically, the Court in Kropa stated:

[T]he words "An abrasive article" are essential to point out the invention defined by the counts. In our judgment those introductory words give life and meaning to the counts, for it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article. Every union of substances capable *inter alia* of use as abrasive grains and a binder is not an "abrasive article." The term calls forth a distinct relationship between the proportions of grain and resin comprising the article.

In the present application, Applicant notes that throughout Hardwick, item 34 is constantly referred to as a "ribbon" and is a simple ribbon structure as known and understood in

the art. This supports Applicant's position that the Examiner's application of the entire cable to disclose the ribbon of the present invention is completely miss-placed.

Secondly, Applicant notes that in the Examiner's comments (found on page 5, para. 7) the Examiner has indicated that the Examiner is interpreting the term "bonded" broadly, and the Examiner is asserting that because the groups of ribbons 30 are held in place against the center member 120d by the layer 124d, then they are "bonded" to the center member 120d. Applicant, again, submits that this is an impermissibly broad reading of the term "bonded".

Applicant notes that the term "bonded" denotes a kind of active adhesion, and is more than simply pressing one against the other. As such, Applicant submits that the Examiner's application of the disclosure within Hardwick to the claims of the present application represents an impermissibly broad interpretation of the term "bonded."

In addition to the forgoing discussion, Applicant submits the following discussions regarding the claims indicated.

Claims 5 and 16:

With regard to claims 5 and 16, the Examiner asserts that there is a "means for separating" the extensions from the core. However, Applicant notes that the Examiner recites nothing, nor identifies anything, in Hardwick which satisfies this limitation. Applicant notes that on page 3 of the Office Action, the Examiner provides no recitation in Hardwick for the means for separating. In fact, because the groups of ribbons 30 are merely held in place in contact with the central member 120d, there is no need for a "means for separating." As such, Applicant submits that there is no "means for separating disclosed" within Hardwick.

In view of the foregoing, Applicant submits for at least this reason, claims 5 and 16 are allowable over the Hardwick reference.

Claims 10-11 and 21-22:

With regard to claims 10-11 and 21-22, Applicant notes that, contrary to the Examiner's assertions, Applicant notes that there is no disclosure of any kind, that either the central member 120d or the stacks 30 comprise a "strength member". In fact, in Hardwick, the strength members 122 are clearly disclosed outside of the stacks 30 and central member 120d. As shown in Figure 26, there is a central ribbon stack 30 and a longitudinal extending central member 120d. However, neither of which are known as a "strength member" as this term is known and used in the field of the present invention.

In view of the foregoing, Applicant submits for at least this reason, claims 10-11 and 21-22 are allowable over the Hardwick reference.

Claim 23:

As with the previous claims, Applicant notes that the Examiner has provided no specific disclosure regarding a cable having a "plurality" of ribbon structures as claimed in claim 23. Even if it were assumed that the Examiner's assertions regarding the central portion 120d and the stacks 30 were correct, it only discloses a single "unit" as identified by the Examiner. There is no disclosure of a plurality of these units. As such there is no disclosure, at all of claim 23. Stated differently, in rejecting claim 1, the Examiner asserts that the combination of the plurality of ribbon stacks 30 and the central portion 120d is a "ribbon" of the present invention. If this is the case, then there is no disclosure, within Hardwick, of a cable with a "plurality" of these

“ribbons” as asserted by the Examiner. In fact, the embodiment shown in Figure 26 is an entire cable assembly, and not a cable with a plurality of ribbons made in accordance with the present invention.

In view of the foregoing, Applicant submits for at least this reason, claim 23 is allowable over the Hardwick reference.

Claims 25-28:

Additionally, Applicant notes that with regard to claims 25-28, there is no disclosure of the stacks 30 being formed “integrally” with the central portion 120d. As clearly shown within the Figures, the stacks merely butt up against a surface of the central portion 120d. Applicant submits that the stacks 30 are not bonded, adhered or made integrally with the central portion 120d, in any way.

In view of the foregoing, Applicant submits for at least this reason, claims 25-28 are allowable over the Hardwick reference.

In view of the foregoing discussions, Applicant submits that Hardwick fails to disclose each and every feature of the claimed invention, and as such fails to anticipate claims 1-5, 7-16 and 18-28. Therefore, Applicant hereby requests the Examiner reconsider and withdraw the above 35 U.S.C. § 102(e) rejection of these claims.

***35 U.S.C. § 103(a) Rejection - Claims 6 and 17:***

Claims 6 and 17 remain rejected under 35 U.S.C. § 103(a), as being unpatentable over Hardwick in view of Greveling. In view of the following discussion, Applicant respectfully disagrees.

As an initial matter, Applicant notes that claims 6 and 17 are dependent on claims 1 and 12, respectfully, and Applicant hereby submits that these claims are allowable for at least the reasons set forth above, as Greveling fails to cure the deficient teachings of Hardwick.

However, additionally and independently, Applicant notes that the Examiner asserts that because the buffer tube 20 in Greveling has some cut-out portions 30, this renders claims 6 and 17 obvious. Applicant completely disagrees. First, Applicant notes that the Examiner's assertion that the buffer tube 20 corresponds to an "extension" of the present invention is completely misplaced. The buffer tube 20 in Greveling shares no resemblance to the extension of the present invention. It is a stand alone tube and does not extend from any kind of central portion. Second, the fact that the cut-out portions 30 exist in the tube 20 is irrelevant to the present invention. There is no teaching that the overall thickness or cross-section of the tube 20 is affected. In fact, it is clearly shown in the Figures (in Greveling) that the overall shape of the tube 20 is unchanged.

Additionally, even if it were assumed that the tube 20 teaches what the Examiner asserts it teaches, there is no teaching or suggestion that such a cut-out portion should be positioned at a point where the tube 20 is bonded to a central member, such as member 120d in Hardwick. In fact, Applicant submits that Greveling makes it very clear that the portions 30 are used to allow easy access to the ribbons within the buffer tubes. Because of this, Applicant notes that one of ordinary skill in the art would not be motivated to place these cutouts against a central core member. This type of placement would simply defeat the purpose of having the cut-outs 30. Stated differently, the cut-outs in Greveling are used to allow access to the core of the tube 20,

which is different from using the cut-outs as a means to remove the tube from any kind of other member.

Further, Applicant submits that there is no disclosure in Hardwick of a need to narrow the ribbon stacks at the point contact is being made with the central portion 120d. In fact such a narrowing would reduce the number of ribbons/fibers that can be held in each stack 30, and thus would not be done by one of ordinary skill in the art. Further, as the stacks 30 are not bonded or adhered to the central member 120d, there would be no motivation to reduce the width of the stack, because there is no retaining force holding the stacks 30 to the central member 120d, once the force of the jacket portion 124d is removed.

In view of the foregoing, Applicant submits that the above prior art references fail to teach or suggest each and every feature of the claimed invention, and that the Examiner has failed to establish a *prima facie* case of obviousness with regard to these claims, and hereby requests the Examiner reconsider and withdraw the above 35 U.S.C. § 103(a) rejection of these claims.

**Conclusion:**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Application No. 09/897,386

Our Ref.: A7977  
Art Unit: 2839

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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CUSTOMER NUMBER

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AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Application No. 09/897,386

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**APPENDIX**

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

**Claims 29-32 are added as new claims.**